

REMARKS

In the Office Action mailed April 7, 2006, the Examiner noted that claims 1, 10, 11, 14 and 18-25 were pending, and rejected claims 1, 10, 11, 14 and 18-25. No claims have been amended and, thus claims 1, 10, 11, 14 and 18-25 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

On page 2 of the Office Action, the Examiner rejected claims 1, 10, 11, 14 and 18-25 under 35 U.S.C. § 102 as anticipated by JUnit.

The Examiner, on the record, as noted on page 2 of the Action, is relying on October 18, 2000 as the publication date ("Claims 1, 10, 11, 14 and 18-25 are rejected under 35 U.S.C. 102(a) as being anticipated by JUnit (Screen Captures 1-33, from www.junit.org, and Publication Date was Oct. 18, 2000"). The JUnit document is a series of web pages, each being of multiple pages where the Examiner has grouped them into a single group called JUnit for convenience and given them page numbers 1-33, circled at the bottom of each page. Where an Arabic number reference to a page number is made below it will be this circled page number annotated thereon by the Examiner.

The present application is based on Japanese Patent Application No. 2000-109416 filed on April 11, 2000 to which priority was claimed by the filing of a certified copy thereof on or about March 12, 2001. A verified English translation of Japanese Patent Application No. 2000-109416 is filed herewith. Benefit of the filing date of April 11, 2000 is requested. Given the benefit of the filing date of Japanese Patent Application No. 2000-109416, the present application has an effective filing date of April 11, 2000. As a result Junit, with an on the record publication date of October 18, 2000, is not prior art to the present application. Withdrawal of the rejection on this basis is requested.

Because there are dates through out the JUnit reference, we spoke to the Examiner by telephone on or about May 19, 2006. In this conversation the Examiner appeared to be considering attempting to rely on a date of January 2000 that appears on page 12 of the JUnit reference. From the page number 33 it appears that the JUnit reference may have been published in October 2000 according to the "Search Results" data, as relied upon in the record. However, the multiplicity of dates appearing on page 33 creates confusion concerning the publication date. The date that appears on page number 12 does not appear to be a publication date but rather some sort of internal date of the JUnit organization or of the author. Even if the January 2000 date is a publication date it does not appear to apply to the entire JUnit

document. Page 12, where the January 2000 date appears, is a first page of a web page that is eleven pages long, ending on page 22 in the circled numbering added by the Examiner. On this page (22) are a series of other dates, starting with "Written 1-3-2000" and ending with "Linked to xp001.zip, 10-26-00" and also the copyright notice for the year 2000 ("Copyright 2000, William C. Wake" - Note, it is well established that an effective date for a Copyright Notice, if it is a publication date, is the last date of the period defined and for this Notice it would be 12/31/2000). It is submitted that a document associated with web page is not available to the public until after the document is "linked" to the web page. As a result, it is submitted that the eleven-page part of the JUnit reference that the Examiner has suggested he may rely on was not available to the public until 10-26-00 and possibly even later. Further confusion is created by the multiplicity of dates that appear in the JUnit reference, see for example page 32.

A prima facie case of anticipation requires that the date relied upon by the Examiner be established. It is the burden of the Examiner to establish the effective date of a reference. This the Examiner has not done. Withdrawal of the rejection on the additional basis of a failure to present a prima facie case of anticipation because an effective date has not been clearly established is requested.

Further, if the Examiner does intend to rely on the January 2000 date found in the JUnit reference, it is the burden of the Examiner to establish that the January 2000 date is actually a publication date and that the January 2000 date applies to the part of the JUnit reference upon which the Examiner relies.

Based on the confusion noted above, if the Examiner intends to rely on any part of the JUnit reference as prior art, the Examiner is requested to establish the basis for any effective date upon which the Examiner relies for each part of the JUnit reference relied upon.

It is submitted that the present claimed invention patentably distinguishes over the prior art and withdrawal of the rejection is requested.

It is submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: July 7, 2006

By: /J. Randall Beckers/
J. Randall Beckers
Registration No. 30,358

1201 New York Ave, N.W., 7th Floor
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501